No. _____

In the Supreme Court of the United States

T&T Rock Distribution, LLC
Petitioner,

v.

Rutilio I. Velasco
Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of The United States

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether this Court should grant Petitioner's certiorari for because the Supreme Court of Texas denied Petitioner's Petition For Review and Motion For Rehearing, which sought review of the opinion that the Waco Court of Appeals found the Trial Court did not abuse its discretion by denying T&T Rock's Motion To Compel Arbitration and Stay Litigation Proceedings and not finding a valid, enforceable arbitration agreement existed under the Federal Arbitration Act?

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CASES

STATUTES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the order of the Texas Supreme Court.

OPINIONS BELOW

The order of the Supreme Court of Texas is set forth at Pet. App. A and the Order Denying Motion For Rehearing is set forth at Pet. App. D. The opinion of the court of appeals in Waco is set forth at Pet. App. B and the Trial Court Order is set forth at Pet. App. C.

JURISDICTION

The Supreme Court of Texas issued its Order on October 19, 2018 and denied a Motion For Rehearing on December 7, 2018. This Court has jurisdiction under 28 U.S.C. § 1257[a]. *See, e.g., Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984); *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 20, 133 S. Ct. 500, 503, 184 L. Ed. 2d 328 (2012).

STATUTORY PROVISIONS INVOLVED

Section 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3 provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C.A. § 3.

STATEMENT OF THE CASE

A. Factual Background

On October 28, 2016, Respondent Rutilio I. Velasco filed a negligence claim for personal injury damages in the 413th District Court of Johnson County, Texas. ("Appellee"). (Vol. 1 CR 12-26). On November 4, 2016, T&T Rock filed their Original Answer stating Respondent's claims should be submitted to binding arbitration. (Vol. 1 CR at 56).

Respondent alleges he was injured at work when fell off a "Teletracker." (Vol. 1 CR at 14-15; 17-21). Respondent has asserted negligence and premises liability claims and seeks recovery of various personal injury damages against his employer and other entities. (Vol. 1 CR at 17-21). T&T Rock moved to compel arbitration under the Arbitration Agreement and Notice of Arbitration Policy signed by Respondent. (Appendix E) (Vol. 1 CR at 85-105).

The Arbitration Agreement and Notice of Arbitration Policy ("Arbitration Agreement") in relevant part states:

> Conroe Pipe, Inc.; Johnson County Pipe, Inc., U.S. Composite Pipe, Inc.; and T&T Rock Distribution, LLC ("Company", "we," "us," or "our" as context requires) maintains a mandatory binding arbitration policy. It is a condition of your employment with us that you and we agree to arbitrate all arbitratable claims arising from or related to your employment with us (the "Claims" itemized

below), save and except any benefit claims arising from or related to your employment with us (the "Claims" itemized below), save and except any benefit claims arising under our Occupational Injury Benefit Plan, and any claims made not arbitrable by governing statute or rule. (Vol. 1 CR at 95; 268).

1. Effective Date: The effective date of this Arbitration Agreement and Notice of Arbitration Policy (this "Arbitration Agreement") is 12/10/15 (the "Effective Date"). If you receive notice of this Arbitration Agreement before you begin work for Company, your commencement of work for Company will be your acceptance of the terms of this Arbitration Agreement. In that event, your first day of work is the date you accepted the terms of this Arbitration Agreement. If you are already working for Company when you receive notice of this Arbitration Agreement, and you continue working for us for more than three days, you will be deemed to have accepted the terms of this Arbitration Agreement on the fourth day, and thereafter. In that event, the fourth day is your effective date to be governed by this Arbitration Agreement. IF YOU CONTINUE TO WORK FOR US AFTER THE EFFECTIVE DATE, YOU AND WE WILL HAVE MUTUALLY AGREED TO ARBITRATE ALL COVERED CLAIMS BETWEEN US, APPLYING THE TERMS OF

THIS ARBITRATION AGREEMENT. (Vol. 1, CR at 95; 268).

2. Arbitration Is Mandatory, Binding, and Mutual: All Claims related to your employment with us arising in any part after the Effective Date, save and except any benefit claims under our Occupational Injury Benefit Plan and any claims made not arbitrable by governing statute or rule, will be resolved only through binding arbitration. You and we both agree to arbitrate all Claims, and you and we both waive all rights to a jury or non-jury trial in state and federal court as to the Claims. (Vol. 1 CR at 95; 268).

3. Who Must Arbitrate Claims: Company and all Company Employees and their spouse, children, parents, estate, successors and assigns are governed by this Arbitration Agreement, and must arbitrate all Claims, Company includes your employer and all officers, directors, Employees, franchisors, franchisees, successors, representatives, predecessors, affiliated or related entities or parent or subsidiary or sister companies of your employer. (Vol. 1, CR at 95; 268).

4. The Claims: Claims covered under this Arbitration Agreement includes, but are not limited to the following: (i) claims arising from any injury suffered by an Employee while in the Course and Scope of Employment with

Company, including but not limited to claims for negligence, gross, negligence, and all claims for personal injuries, physical impairment, disfigurement, pain and suffering, mental anguish, wrongful death and survival actions, loss of services and or consortium, emotional distress, and exemplary or punitive damages if allowed; (ii) all claims relating to an Employee's application with, employment with, or termination from the Company, including but not limited to claims relating to wages, breach of any contract, claims for discrimination or harassment; claims for violation of any federal or state statute, regulation, or common law; and, claims intellectual property violations, unfair competition and or the use and/or unauthorized disclosure of trade secrets or confidential information. Covered claims include the medical and hospital expenses, drugs, and durable medical equipment, and medical transportation, to the extent those expenses and items are not benefits covered under Company's Occupational Injury Benefit Plan. "Course and Scope of Employment" means an activity of any kind that has to do with the work, business, trade, or profession of Company and it performed by you while engaged in or about the furtherances of the affairs or business of Company, whether conducted on Company premises or elsewhere. (Vol. 1, CR at 95-96; 268-69).

5. What claims are Not Claims: … Any dispute as to whether a claim is arbitratable shall be resolved by the Arbitrator under this Arbitration Agreement. (Vol. 1 CR at 96; 269).

6. How the Arbitration Will Be Conducted: You and we agree Company is engaged in interstate commerce, and that the Federal Arbitration Act ("FAA") will govern all aspects of this Arbitration Agreement. However, should the FAA or other law be amended so that FAA no longer governs this Arbitration Agreement, the Texas common law or arbitration shall apply…. (Vol. 1, CR at 96; 269).

13. Severability: If any provision of this Arbitration Agreement is adjudged to be invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Arbitration Agreement will remain in effect. This Arbitration Agreement has been translated into Spanish. In the event of conflict, or apparel conflict between the Spanish version and this version, this version will govern…. (Vol. 1, CR at 97; 270).

16. Consideration: The mutual promises made herein between us to arbitrate Claims this Arbitration Agreement are consideration for this Arbitration Agreement. Your continued employment with Company and its employment and its employment of you, after

having been notified of institution of this Arbitration Agreement and the terms hereof, are consideration for this Arbitration Agreement. This Arbitration Agreement has been delivered to you in conjunction with delivery to you of the Summary Plan Description for Company's Occupational Injury Benefit Plan and Company's HIPPA Privacy Notice, receipt of both of which you are hereby acknowledge. Payments made to you under that Benefit Plan are also consideration for this Arbitration Agreement. (Vol. 1, CR at 98; 271).

17. Termination and Amendment: We have the right to terminate or amend this Arbitration Agreement only a prospective basis, and no termination or amendment will affect any Claim which occurs before the effective date of such termination or amendment. All such prior Claims will be arbitrated under this Arbitration Agreement. Subject to the foregoing, this Arbitration Agreement will survive our employer-employee relationship with you, and will apply to any Claim which arises or is asserted during or after your employment with us. This Arbitration Agreement is not terminated or affected by termination of our Occupational Injury Benefit Plan. You will be provided at least ten days' advance notice of any prospective amendment or termination of this Arbitration Agreement, before it comes effective to you. (Vol. 1 CR at 98; 271).

> 18. I acknowledge receipt of this Arbitration Agreement and Notice of Arbitration Policy. I have read it, or have an opportunity to read it, and I understand and agree to same. I also acknowledge receipt of the Summary Plan Description or Company's Occupational Injury Benefit Plan, and the Company's HIPPA Privacy Notice. (Vol. 1 CR at 98; 271).

A document identified as a "Payroll Stuffer" states:

> NOTICE OF ARBITRATION POLICY: Conroe Pipe, Inc.; Johnson County Pipe, Inc.; U.S. Composite Pipe, Inc.; and T&T Rock Distribution, LLC and their related entities (together and individually the "Company") have implemented a mandatory binding claims Arbitration Policy, effective 12/10/15. The Arbitration Policy is set forth in detail in the "Arbitration Agreement and Notice of Arbitration Policy" which Company has distributed to all Employees. Under the Arbitration Policy, you and Company mutually agree to arbitrate claims or disputes arising between you and Company, including all claims arising from occupational injury, or concerning your job or Company's working conditions (except benefit claims arising under Company's Occupational Injury Benefit Plan and certain non-arbitrable claims). The Arbitration Policy is a condition of your employment with Company. If you continue

> employment with Company will be bound by it. You must bring your arbitration claim within one (1) year after the date of the event or injury which is the basis of your claim. Company must do the same. The Arbitrator will not have authority to award punitive damages as to any party, unless they are granted by statute. If you have not received a copy of the Arbitration Agreement and Notice of Arbitration Policy, please tell you Supervisor and he or she will provide it to you. (1 CR at 94; 267).

On December 15, 2015, Respondent signed the Arbitration Agreement in Spanish. (Vol. 1 CR at 105). By signing this document, Respondent agreed "I acknowledge receipt of this Arbitration Agreement and Notice of Arbitration Policy. I have read it, or have an opportunity to read it, and I understand and agree to the same." (Vol. 1 CR at 98; 105; 271; 278).

B. Procedural History

On November 7, 2016, T&T Rock filed a Motion To Compel Arbitration and Motion To Stay Trial Proceedings. (Vol. 1 CR at 85-105). In its Motion, T&T Rock argued and submitted undisputed evidence the arbitration agreement was governed by the Federal Arbitration Act. (Vol. 1 CR at 85-105). On November 10, 2016, Respondent filed Plaintiff's Response to Defendant's Motion to Compel Arbitration and Stay Litigation Proceedings. (Vol. 1 CR 189-197).

On November 30, 2016, the Trial Court [413th District Court of Johnson County, Texas] conducted a hearing on T&T Rock's Motion To Compel Arbitration and Stay Litigation Proceedings. (Vol. 3-4 RR 4-64). On December 1, 2016, the Trial Court signed an Order Regarding Arbitration. (Appendix C) (Vol. 1 RR at 289).

On December 1, 2016, T&T Rock filed an appeal of this Order. (Vol. 1, CR 290-293). On December 20, 2017, The Waco Tenth Court of Appeals issued a Memorandum Opinion affirming the Trial Court's Order. *T&T Rock Distribution, LLC v. Velasco*, No. 10-16-00408-CV, 2017 WL 7048921 (Tex. App. – Waco 2017, Dec. 20, 2017, pet. filed) (mem. op). (Appendix B).

On January 23, 2018, T&T Rock filed its Petition For Review with the Supreme Court of Texas. On May 7, 2018, Respondent filed his Response to the Petition for Review. On May 21, 2018, T&T Rock filed its Reply to Respondent's Response. On May 30, 2018, Respondent filed his Sur-Reply.

On October 19, 2018, the Supreme Court of Texas denied the Petition for Review. (Appendix A). Petitioner filed a motion for rehearing on December 7, 2018, which was denied on December 7, 2018. (Appendix D).

ARGUMENT

The Texas Supreme Court was required to apply federal law to its analysis of whether Respondent's claims should be compelled to binding arbitration under the Federal Arbitration Act ("FAA").

As this Court has held, the FAA establishes a national policy for arbitration when the parties contract for that type of dispute resolution. *See Southland Corp. v. Keating*, 465 U.S. 1, 104 S. Ct. 852, 79.C.Ed.2d. l (1984), *Preston v. Ferrer*, 552 U.S. 346,349, 128 S. Ct. 978, 981, 169 C.Ed. 2d 917 (2008)). The FAA, which rests on Congress authority under Commerce Clause, supplies not simply a procedural framework applicable in federal Courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration. *Id*.

Congress enacted the FAA, 9 U.S.C. §§ 1 et. seq. in 1925 "to overrule the judiciary's longstanding refusal to enforce arbitration agreements to arbitrate." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219-20 (1985). The FAA embodies a "liberal federal policy favoring arbitration" and "create[s] a body of substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24 (1983). Under the FAA, "questions about arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Id*. And as a matter of federal law, any doubts" about the construction of a contract must be "resolved in favor arbitration." *Id*. at 24-25.

The Presented Question is Important Because the Supreme Court of Texas Improperly Ignored Federal Law, Specifically the FAA.

Did the Texas Supreme Court violate the FAA by not reversing the Trial Court and Waco Court of

Appeals and finding a valid, enforceable arbitration agreement existed under the FAA?

A recent case from this Court requires this Court to grant Petitioner's Petition for Writ of Certiorari and set aside the "judicial hostility" exhibited by State of Texas for not enforcing a valid arbitration agreement pursuant to the FAA. *See Epic Systems Corp. v. Lewis*, 584 U.S. 1, 2, 138 S. Ct. 1612, 1619 (2018). In *Epic Systems Corp.*, the Supreme Court of the United States noted the Federal Arbitration Act requires courts "rigorously" to "enforce arbitration agreements according to their terms." *Epic Systems Corp. v. Lewis*, 584 U.S. 1, 5, 138 S. Ct. 1612, 1620 (2018). In a concurring opinion, Justice Thomas stated the Federal Arbitration Act states arbitration agreements are "valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract." *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1632-33 (2018). (Thomas J., concurring). In denying this Petition for Review, the Supreme Court of Texas failed to follow the federal requirement, under the FAA, to enforce a valid arbitration agreement.

In 1925, Congress passed and President Coolidge signed the Federal Arbitration Act. As relevant here, the Act provides:

A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Under the Act, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms. *Rent-A-Center, West, Inc. v. Jackson,* 561 U.S. 63, 67, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403, 407 (2010).

The decision by the Supreme Court of Texas to deny Petitioner's Petition for Review reflects judicial hostility to arbitration. This Court should correct this as it has done in the past under the FAA to prevent court imposed obstacles to the enforcement of arbitration agreements.

CONCLUSION

For all of these reasons, the Petition for Certiorari should be granted and the decision below reversed. The Order of the Supreme Court of Texas evidences hostility to arbitration, despite the requirements of the FAA.

Respectfully submitted,

/s/ Gerard T. Fazio
Gerard T. Fazio
Counsel of Record
Jason E. Kipness
Attorney

January 16, 2019.

No. _____

In the Supreme Court of the United States

T&T Rock Distribution, LLC
Petitioner,

v.

Rutilio I. Velasco
Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of The United States

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

SUPREME COURT OF TEXAS

No. 18-0052

T&T Rock Distribution, LLC - *Petitioner*,

v.

Rutilio I. Velasco - *Respondent*.

Order Denying Petition for Review Issued on October 19, 2018

ORDER

RE: Case No. 18-0052 DATE: 10/19/2018
COA #: 10-16-00408-CV TC#: DC-C201600551
STYLE: T&T ROCK DISTRIB., LLC. v. VELASCO

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MR. GERARD T. FAZIO
OWEN & FAZIO, P.C.
10440 N. CENTRAL EXPWY,
SUITE 1450
DALLAS, TX 75231-2236

* DELIVERED VIA E-MAIL *

APPENDIX B

TEXAS COURT OF APPEALS FOR THE TENTH DISTRICT

No. 10-16-00408-CV

T&T Rock Distribution, LLC - *Appellant*,

v.

Rutilio I. Velasco - *Appellee*.

Opinion Delivered and Filed on December 20, 2017

MEMORANDUM OPINION

Al Scoggins, Justice

In eleven issues, appellant, T&T Rock Distribution, LLC, complains about the trial court's denial of its motion to compel arbitration and stay litigation proceedings. We affirm.

I. BACKGROUND

In his original petition, appellee, Rutilio I. Velasco, alleged that he sustained life-altering

injuries as a result of an incident that occurred at "the Yard, which was owned, possessed, managed, operated and/or controlled by one of more of the Defendants."[1] Specifically, while working for appellant, Velasco was standing on the conveyor belt of a Superior Telestacker machine while the machine was turned off, attempting to resolve an issue with the machine. However, another worker turned the conveyor belt of the machine on while Velasco was still standing on it or near it, which caused Velasco to be thrown to the ground thirty feet below. As a result of the incident, Velasco asserted that he sustained "multiple broken bones, punctured organs, and damage to his head, neck, and face. Mr. Velasco's diagnosis is still ongoing." And because of these injuries, Velasco asserted premises-liability and negligence claims against appellant.

Among other things, appellant filed an original answer denying the allegations contained in Velasco's original petition, as well as a motion to compel arbitration and stay litigation proceedings. In its motion to compel arbitration, appellant contended that Velasco signed an arbitration agreement, which waived his right to initiate or prosecute a lawsuit and required the arbitration of claims, including tort claims and claims arising from work-related injuries. Appellant also asserted that Velasco's injuries were

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[1] In addition to T&T Rock, KTI Incorporated, Johnson County Pipe, Inc., and Kenneth M. Thompson, LLC were sued by Velasco. All of these parties filed a joint notice of appeal in this case; however, KTI, Johnson County Pipe, and Kenneth M. Thompson LLC filed motions to dismiss their appeals, which we have granted.

covered under the arbitration agreement and that the Federal Arbitration Act applied in this case. Attached to appellant's motion to compel arbitration were copies of the arbitration agreement—one in English, which was not signed by Velasco, and what appellant refers to as a Spanish version of the arbitration agreement that was signed by Velasco. Velasco responded to appellant's motion to compel arbitration arguing that "there is no enforceable arbitration agreement in place," among other things.

Ultimately, after a hearing, the trial court denied appellant's motion to compel arbitration and stay litigation proceedings. This accelerated, interlocutory appeal followed. *See* TEX. R. APP. P. 28.1(a); TEX. CIV. PRAC. & REM. CODE ANN. § 51.016 (West 2015).

II. APPLICABLE LAW

"Generally, we review a trial court's decision to grant or deny a motion to compel arbitration under an abuse of discretion standard." *Enter. Field Servs., LLC v. TOC-Rocky Mountain, Inc.*, 405 S.W.3d 767, 773 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). Under this standard, we defer to a trial court's factual determinations if they are supported by evidence; however, we review a trial court's legal determinations de novo. *In re Labatt Food Serv., L.P.*, 279 S.W.3d 640, 643 (Tex. 2009) (orig. proceeding). Whether a valid arbitration agreement exists and whether the arbitration agreement is ambiguous are questions of law that we review de novo. *In re D. Wilson Constr. Co.*, 196 S.W.3d 774, 781 (Tex. 2006)

(orig. proceeding).

A party seeking to compel arbitration must establish the existence of a valid, enforceable arbitration agreement and that the claims at issue fall within that agreement's scope. *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005) (orig. proceeding). If the movant establishes that an arbitration agreement governs the dispute, the burden shifts to the party opposing arbitration to establish a defense to the arbitration agreement. *In re Provine*, 312 S.W.3d 824, 829 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding) (citing *In re Oakwood Mobile Homes, Inc.*, 987 S.W.2d 571, 573 (Tex. 1999) (orig. proceeding)). Once the movant established a valid arbitration agreement covering the claims at issue, a trial court has no discretion to deny the motion to compel arbitration unless the opposing party proves a defense to arbitration. *Id.* (citing *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753-54 (Tex. 2001) (orig. proceeding)).

Because state and federal policies favor arbitration, courts must resolve any doubts about an arbitration agreement's scope in favor of arbitration. *In re FirstMerit Bank, N.A.*, 52 S.W.3d at 753. To be subject to arbitration, the "allegations need only be factually intertwined with arbitrable claims or otherwise touch upon the subject matter of the agreement containing the arbitration provision." *In re B.P. Am. Prod. Co.*, 97 S.W.3d 366, 371 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding). However, no presumption of arbitrability arises until the court has found there is an enforceable arbitration agreement. *In re Jebbia*, 26 S.W.3d 753, 756-57 (Tex.

App.—Houston [14th Dist.] 2000, orig. proceeding).

III. ANALYSIS

In its first ten issues, appellant makes numerous arguments to show that the trial court abused its discretion by denying appellant's motion to compel arbitration and stay litigation proceedings. Among the arguments made by appellant on appeal are that a valid arbitration agreement exists; that Velasco's claims fit within the scope of the agreement; that consideration exists to support the agreement; and that the Federal Arbitration Act applies to this agreement. At the outset, we will address the argument made by Velasco in the trial court and on appeal that appellants cannot rely on an unsigned arbitration agreement.

Though public policy favors the arbitration of disputes, arbitration is also a creature of contract. *See In re Big 8 Food Stores, Ltd.*, 166 S.W.3d 869, 876 (Tex. App.—El Paso 2005, orig. proceeding) (citing *Am. Heritage Life Ins. Co. v. Lang*, 321 F.3d 533, 537 (5th Cir. 2003); *Ysleta Indep. Sch. Dist. v. Godinez*, 998 S.W.2d 700, 702 (Tex. App.—El Paso 1999, no pet.)). As such, a party cannot be compelled to arbitrate a dispute unless he has agreed to do so. *Id.* (citing *Lang*, 321 F.3d at 537). Furthermore, under standard contract principles, the presence or absence of signatures on a written contract is relevant to determining whether the contract is binding on the parties. *Id.* (citing *In re Bunzi USA, Inc.*, 155 S.W.3d 202, 209 (Tex. App.—El Paso 2004, orig. proceeding)).

Here, appellant asserts that Velasco signed

what appellant contends is a Spanish version of the arbitration agreement. It is undisputed that Velasco did not sign the English version. Nevertheless, appellant attached copies of both the English and Spanish versions of the agreement to its motion to compel arbitration and relied on the English version when making arguments to compel arbitration. At the hearing on the motion to compel arbitration, appellant's counsel noted: "The English version, if you read it, Your Honor, even says in the severability clause, it says, 'This Arbitration Agreement has been translated into Spanish. In the event of conflict or apparent conflict between the Spanish version and this version, this version will govern.'" Indeed, the English version of the agreement does provide the aforementioned statements referenced by appellant's counsel. Additionally, when this dispute arose during the hearing, the trial court mentioned: "I don't have any reason to doubt that the English version is the same as the Spanish version…."

Nevertheless, on appeal, Velasco argues that appellant cannot rely on the English version because it has not "been purported to be a translation of the Spanish document that was presented in the trial court, much less a certified translation as required by the Texas Rules of Civil Evidence . . . ." In making this argument, Velasco relies heavily on Texas Rules of Evidence 902(3) and 1009. *See* TEX. R. EVID. 902(3), 1009.

We are not persuaded by Velasco's reliance on Rule 902(3), as that rule pertains to the self-authentication of a foreign public document, which is a "document that purports to be signed or attested by

a person who is authorized by a foreign country's law to do so." *Id.* at R. 902(3). The document at issue here is not of the type referenced by Rule 902(3).

On the other hand, Rule 1009 does address the type of document involved in this case—the translation of a foreign-language document. *See id.* at R. 1009. Specifically, with regard to the admissibility of a translation of a foreign-language document, a party must, at least forty-five days before trial, serve on all parties: (1) "the translation and the underlying foreign language document"; and (2) "a qualified translator's affidavit or unsworn declaration that sets forth the translator's qualifications and certifies that the translation is accurate." The record does not reflect that appellant served on all parties, at least forty-five days before trial, a translation and the underlying foreign-language document, as well as a qualified translator's affidavit or unsworn declaration. As such, we cannot say that appellant satisfied the requirements of Rule 1009. *See id.* And because appellant failed to satisfy the requirements of Rule 1009, we cannot say that the purported English version of the arbitration agreement was properly before the trial court. *See id.*; *see also Owens-Corning Fiberglas Corp. v. Malone,* 972 S.W.2d 35, 43 (Tex. 1998) (noting that a ruling on the admissibility of evidence will be affirmed on appeal if there is any legitimate basis in the record to support it).

However, despite the foregoing, appellant complains that Velasco waived his complaint about the usage of the English version of the arbitration agreement by appellant as a translation of the Spanish agreement that Velasco purportedly signed.

Rule 1009 specifically addresses objections to foreign-language documents. In particular, Rule 1009(b) provides that: "When objecting to a translation's accuracy, a party should specifically indicate its inaccuracies and offer an accurate translation. A party must serve the objection on all parties at least 15 days before trial." *Id.* at R. 1009(b). Moreover, Rule 1009(c) states that:

> If the underlying foreign language document is otherwise admissible, the court must admit—and may not allow a party to attack the accuracy of—a translation submitted under subdivision (a) unless the party:
>
> (1) Submitted a conflicting translation under subdivision (a); or
>
> (2) Objected to the translation under subdivision (b).

Id. at R. 1009(c). Implicit in subsections (b) and (c) of Rule 1009 is that the opposing party provided the necessary documentation outlined in subsection (a). *See id.* at R. 1009.

As noted above, appellant did not comply with the requirements of Rule 1009 to serve on all parties, at least forty-five days before trial, a translation and the underlying foreign-language document, as well as a qualified translator's affidavit or unsworn declaration. And because appellant did not serve a proper translation of the purported Spanish version of the signed arbitration agreement, there was nothing for Velasco to object to under Rule 1009(b), though he objected to the admissibility of the relevant

documents anyway.[2] *See id.* at R. 1009(b). Accordingly, we are not persuaded by appellant's waiver contention.

Therefore, based on the foregoing, we conclude that the trial court did not abuse its discretion by denying appellant's motion to compel and stay litigation proceedings because the effect of appellant's failure to comply with Rule 1009 was that appellant failed to establish the existence of a valid, enforceable arbitration agreement. *See id.*; *see also In re Kellogg Brown & Root, Inc.*, 166 S.W.3d at 737; *Enter. Field Servs., LLC*, 405 S.W.3d at 773; *In re Jebbia*, 26 S.W.3d at 756-57. Accordingly, we overrule appellant's first ten issues, as they presuppose the existence of a valid, enforceable arbitration agreement. *See* TEX. R. APP. P. 47.1.

Next, we address appellant's eleventh issue, which asserts that the trial court abused its discretion by denying appellant's motion to compel arbitration and stay litigation proceedings *with prejudice*. The entirety of appellant's argument in this issue is as follows:

> The Order signed by the Trial Court denied Appellants' Motion with prejudice. Appellants argue there is no statute or caselaw that

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[2] Velasco specifically objected that:

> And they haven't proved that the Spanish version that they allege that my client signed, which hasn't been proven yet, is a legally sufficient translation into English and, therefore, the English version – They need to bring someone to do that, Judge. It's their burden of proof with respect to that issue.

> permits the Trial Court to deny a Motion to Compel Arbitration with prejudice. The FAA provides no legal basis and Appellants argue no caselaw permits this as well. See 9 U.S.C. §§ 1-16. Appellants argue the Trial Court committed error and abused its discretion by denying the Motion with prejudice.

Notwithstanding the fact that this issue is arguably inadequately briefed, *see* TEX. R. APP. P. 38.1(i), the Fifth Circuit Court of Appeals has stated that: "If the trial court determines that there is no contractual relationship between the parties requiring arbitration of a dispute between them, or that no dispute between them falls within the scope of an arbitration agreement by which they are mutually bound, the court must deny the motion to compel arbitration *with prejudice*." *ASW Allstate Painting & Constr. Co. v. Lexington Ins. Co.*, 188 F.3d 307, 311 (5th Cir. 1999) (emphasis added). In light of the foregoing, we cannot say that the trial court abused its discretion by denying appellant's motion to compel and stay litigation proceedings with prejudice. We overrule appellant's eleventh issue.

IV. CONCLUSION

Having overruled all of appellant's issues on appeal, we affirm the judgment of the trial court.

APPENDIX C

TEXAS TRIAL COURT FOR THE 413TH JUDICIAL DISTRICT OF JOHNSON COUNTY

No. DC-C201600551

Rutilio I. Velasco - *Plaintiff*,

v.

KTI, Incorporated, Johnson County Pipe, Inc., Kenneth M. Thompson, LLC, and T&T Rock Distribution , LLC, - *Defendants*.

Order Regarding Arbitration Issued on December 1, 2016

ORDER

BEFORE THE COURT is Defendants KTI, Incorporated, Johnson County Pipe, Inc., Kenneth M. Thompson, LLC, and T&T Rock Distribution, LLC's (sometimes collectively referred herein as "Defendants") motion to compel arbitration and stay litigation proceedings (the "Motion"). The Court having considered the Motion, the responsive pleadings, the Court's file and record, and only the

evidence admitted[1] at the evidentiary hearing, the argument of counsel and applicable Texas case law hereby finds that the Motion should be DENIED. It is therefore,

ORDERED that the Motion be, and hereby is, DENIED with prejudice.

IT IS SO ORDERED

SIGNED this 1st day of Dec. 2016.

/s/ Judge William Bosworth
Honorable William Boswroth
Johnson County District Court Judge

Seal: Judge William C. Bosworth Jr. Local Admin. Judge, District Judge 413th Judicial District.

[1] The Cassel Affidavit was marked as Plaintiff's exhibit one, not offered by Plaintiff and arguably offerrsed [sic] by Defendant as "Mr. Cassell's Affidavit and the Exhibit." After review the Court sustains Plaintiff's objections to the "Cassell Affidavit in the Exhibit."

APPENDIX D

SUPREME COURT OF TEXAS

No. 18-0052

T&T Rock Distribution, LLC - *Petitioner*,

v.

Rutilio I. Velasco - *Respondent*.

Order Denying Motion for Rehearing Issued on December 7, 2018

ORDER

RE: Case No. 18-0052 DATE: 12/7/2018
COA #: 10-16-00408-CV TC#: DC-C201600551
STYLE: T&T ROCK DISTRIB., LLC. v. VELASCO

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. GERARD T. FAZIO
OWEN & FAZIO, P.C.
10440 N. CENTRAL EXPWY,
SUITE 1450

DALLAS, TX 75231-2236
* DELIVERED VIA E-MAIL *

APPENDIX E

TEXAS TRIAL COURT FOR THE 413TH JUDICIAL DISTRICT OF JOHNSON COUNTY

No. DC-C201600551

Rutilio I. Velasco - *Plaintiff*,

v.

KTI, Incorporated, Johnson County Pipe, Inc., Kenneth M. Thompson, LLC, and T&T Rock Distribution , LLC, - *Defendants*.

Affidavit of Davis Cassell
Arbitration Agreement
Payroll Stuffer

Affidavit of Davis Cassell

STATE OF TEXAS §
§
JOHNSON COUNTY §

BEFORE ME, the undersigned authority, on this day personally appeared Davis Cassell, who, being by me duly sworn according to law, deposed and said:

1. "My name is Davis Cassell. I have never been convicted of a felony or a crime of moral turpitude. I am over 18 years of age, of sound mind, and competent to make this affidavit.

2. "I have personal knowledge of the facts contained in this affidavit and they are true and correct. I am the office manager and a custodian of records for T&T Rock Distribution, L.L.C. I am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities."

3. "Attached hereto as twelve (12) pages of records. These are exact duplicates of the original records."

4. "It is the regular practice of T&T Rock Distribution, L.L.C. to make this type of record at or near the time of each act, or event set forth in the record. It is the regular practice of T&T Rock Distribution, L.L.C. for this type of record to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them."

5. "It is the regular practice of T&T Rock Distribution, L.L.C. to keep this type of record in the course of regularly conducted business activity. It is the regular practice of the business activity to make these records."

"FURTHER AFFIANT SAYETH NOT."

SIGNED ON this 22nd day of November, 2016.

/s/ Davis Cassell

DAVIS CASSELL

STATE OF TEXAS §
§
JOHNSON COUNTY §

SWORN TO and SUBSCRIBED before me by Davis Cassell on the 22nd day of November, 2016.

/s/ Traci J. Sims
Notary Public in abnd for the State of Texas

Traci J. Sims
Typed or Printed Name of Notary Public

Commission Expires:
July 16, 2017

Seal: Notary Public State of Texas, Traci J. Sims, My Commission Expires July 16, 2017.

Arbitration Agreement – English

ARBITRATION AGREEMENT AND NOTICE OF ARBITRATION POLICY

Conroe Pipe, Inc.; Johnson County Pipe, Inc.; U.S. Composite Pipe, Inc.; and, T&T Rock Distribution, LLC. ("Company," "we," "us," or "our" as context requires) maintains a mandatory binding arbitration policy. It is a condition of your employment with us that you and we agree to arbitrate all arbitrable claims arising from or related

to your employment with us (the "Claims," itemized below), save and except any benefit claims arising under our Occupational Injury Benefit Plan, and any claims made not arbitrable by governing statute or rule.

1. **Effective Date:** The effective date of this Arbitration Agreement and Notice of Arbitration Policy (this "Arbitration Agreement") is 12/10/15 (the "Effective Date"). If you receive notice of this Arbitration Agreement before you begin work for Company, your commencement of work for Company will be your acceptance of the terms of this Arbitration Agreement. In that event, your first day of work is the date you accepted the terms of this Arbitration Agreement. If you are already working for Company when you receive notice of this Arbitration Agreement, and you continue working for us for more than three more days, you will be deemed to have accepted the terms of this Arbitration Agreement on the fourth day, and thereafter. In that event, the fourth day is your effective date to be governed by this Arbitration Agreement. **IF YOU CONTINUE TO WORK FOR US AFTER THE EFFECTIVE DATE, YOU AND WE WILL HAVE MUTUALLY AGREED TO ARBITRATE ALL COVERED CLAIMS BETWEEN US, APPLYING THE TERMS OF THIS ARBITRATION AGREEMENT.**

2. **Arbitration is Mandatory, Binding, and Mutual:** All Claims related to your employment with us arising in any part after the Effective Date, save and except any benefit claims under our

Occupational Injury Benefit Plan and any claims made not arbitrable by governing statute or rule, will be resolved only through mandatory binding arbitration. **You and we both agree to arbitrate all Claims, and you and we both waive all rights to a jury or non-jury trial in state and federal court as to the Claims.**

3. **Who Must Arbitrate Claims:** Company and Company Employees and their spouse, children, parents, estate, successors and assigns are governed by this Arbitration Agreement, and must arbitrate all Claims. Company includes your employer and all officers, directors, Employees, agents, franchisors, franchisees, successors, representatives, predecessors, affiliated or related entities or parent or subsidiary or sister companies of your employer.

4. **The Claims:** Claims covered under this Arbitration Agreement include, but are not limited to the following: (i) claims arising from any injury suffered by an Employee while in the Course and Scope of Employment with Company, including but not limited to claims for negligence, gross negligence, and all claims for personal injuries, physical impairment, disfigurement, pain and suffering, mental anguish, wrongful death and survival actions, loss of services and or consortium, emotional distress, and exemplary or punitive damages if allowed; (ii) all claims relating to an Employee's application with, employment with, or termination from the Company, including but no limited to claims relating to wages,

breach of any contract, claims for discrimination or harassment; claims for violation of any federal or state statute, regulation or common law; and, claims for intellectual property violations, unfair competition and or the use and/or unauthorized disclosure of trade secrets or confidential information. Covered Claims include medical and hospital expenses, drugs and durable medical equipment, and medical transportation, to the extent those expenses and items are not benefits covered under Company's Occupational Injury Benefit Plan. "Course and Scope of Employment" means an activity of any kind that has to do with the work, business, trade, or profession of Company and is performed by you while engaged in or about the furtherance of the affairs or business of Company, whether conducted on Company premises or elsewhere.

5. **What claims are Not Claims:** The following claims are not Claims: (i) benefit claims under out Occupational Injury Benefit Plan; (ii) claims covered by collective bargaining agreement; (iii) claims for Unemployment Compensation Benefits; (iv) compensation claims under the Texas Workers' Compensation Act or other similar statute; (v) claims under Company's welfare or pension benefit plans having internal non-judicial dispute resolution procedures; and (vi), claims made not arbitrable by governing statute or rule. Any dispute as to whether a claim is arbitrable shall be resolved by the Arbitrator under this Arbitration Agreement.

6. **How the Arbitration will be Conducted:** You and we agree Company is engaged

in interstate commerce, and that the Federal Arbitration Act (the "FAA") will govern all aspects of this Arbitration Agreement. However, should the FAA or other law be amended so the FAA no longer governs this Arbitration Agreement, the Texas common law of arbitration shall apply. All arbitrations under this Arbitration Agreement will be administered by Benchmark Arbitration Services, Inc. under its rules for resolution of disputes. If Benchmark Arbitration Services, Inc. is unable or unwilling to administer the arbitration, then Judicial Workplace Arbitrations, Inc. shall administer the arbitration under its rules for resolution of disputes. Should Judicial Workplace Arbitrations, Inc. be unwilling or unable to administer the arbitration, the American Arbitration Association will administer the arbitration under its then existing rules from its Dallas, Texas Panel, or the parties may mutually agree upon any other arbitrator. A stenographic record shall be taken of the arbitration hearing, at Company's sole expenses.

7. **How the Arbitrator is Selected:** Any arbitration under this Arbitration Agreement will use one arbitrator, who will come from a panel of at least three arbitrators provided by the firm administering the arbitration. If you and we cannot agree on the arbitrator, you and we will have an equal number of strikes to reduce the panel until only one arbitrator remains. That person will be the arbitrator under this Arbitration Agreement. Any arbitrator must be neutral as to all parties. Standards for recusal of the arbitrator will be the same as for trial judges under

Texas law. If the party bringing the arbitration lives more than 50 miles from Dallas, that party may elect to arbitrate in Dallas, or at a location within 50 miles of their residence.

8. **Arbitration Fees and Expenses:** Company will pay the arbitrator's fee and the cost of a stenographic record of the arbitration hearing.

9. **One-Year Time Limit on Bringing a Claim: All parties must file a Claim for arbitration within one (1) year after the date of this incident or occurrence giving rise to the Claim.** Failure to do so will result in the Claim being barred as at that one-year date. Should this time limitation become unenforceable because of applicable statute or case law, we and you agree the arbitrator may determine the appropriate limitations period in a pre-arbitration hearing.

10. **Limitation on Discovery:** Discovery and pre-hearing proceedings will generally be governed by the Texas Rules of Civil Procedure. The discovery devices and scope of discovery set forth in those rules will apply, except that each party can only depose: (i) the opposing party; (ii) one additional fact witness; and (iii) any expert witness designated by the opposing party. This limitation can be changed by the arbitrator for good cause shown, otherwise, this paragraph shall govern paragraph 1. Above.

11. **Remedies and Defenses:** Generally, all parties may allege any cause of action, obtain any

remedy, and assert any legal or equitable defense available in a Texas state or federal court; **however, the arbitrator will have no authority to award punitive or exemplary damages, unless they are provided to the claiming party under a statute.** All parties are entitled to file any motions, including dispositive motions, permitted under the Texas Rules of Civil Procedure.

12. **Written Award and Confirmation of Award:** After the arbitration hearing is over, the arbitrator will issue an award and send a copy to all parties. Tlhe award need not be a reasoned or "explained" award; it can just be a sum of money, or zero. Under Section 9 of the FAA, a judgment of any Texas court of competent jurisdiction may be entered to enforce the arbitration award. Any party may appeal a judgment entered by a court to confirm the arbitrator's award. You and we agree the standard of review for a judgment arising from the arbitrator's award under this Arbitration Agreement will be the same standard of review that would apply to a judgment rendered after trial in a Texas state court.

13. **Severability:** If any provision of this Arbitration Agreement is adjudged to be invalid, illegal, or unforceable, in whole or in part, the remaining provisions of this Arbitration Agreement will remain in effect. This Arbitration Agreement has been translated into Spanish. In event of conflict, or apparent conflict between the Spanish version and this version, this version will govern.

14. **Not a Contract of Employment:** Although this Arbitration Agreement alters the terms of your at-will employment with Company, it is not, and shall not be construed to create, a contract of continued employment, either express or implied, for any person.

15. **Confidentiality:** You and we agree that any arbitration or settlement of a Claim will be kept strictly confidential, except for: (i) communications made, pleadings filed, and materials submitted in connection with entry or appeal of the arbitrator's award; (ii) communications or reports to the Internal Revenue Service; and (iii) when you or we are compelled to testify by subpoena.

16. **Consideration:** The mutual promises made herein between us to arbitrate Claims under this Arbitration Agreement are consideration for this Arbitration Agreement. Your continued employment with Company and its employment of you, after having been notified o institution of the Arbitration Agreement and the terms hereof, are consideration for this Arbitration Agreement. This Arbitration Agreement has been delivered to you in conjunction with delivery to you of the Summary Plan Description for Company's Occupational Injury Benefit Plan and Company's HIPAA Privacy Notice, receipt of both of which you hereby acknowledge. Payments made to you under that Benefit Plan are also consideration for this Arbitration Agreement.

17. **Termination and Amendment:** We have the right to terminate or amend this Arbitration Agreement only on a prospective basis, and no termination or amendment will affect any Claim which occurs before the effective date of such termination or amendment. All such prior Claims will be arbitrated under this Arbitration Agreement. Subject to the foregoing, this Arbitration Agreement will survive our employer-employee relationship with you, and will apply to any Claim which arises or is asserted during or after your employment with us. This Arbitration Agreement is not terminated or affected by termination of our Occupational Injury Benefit Plan. You will be provided at least ten calendar days' advance notice of any prospective amendment or termination of this Arbitration Agreement, before it becomes effective as to you.

18. **Application to Others:** You and we agree that any Claim now or hereafter brought by your spouse, children, parents, estate, successors and or assigns will be arbitrated under this Arbitration Agreement, as will any Claim now or hereafter brought by any of Company's officers, directors, agents, predecessors, successors, parent or affiliated or sister companies.

19. **I acknowledge receipt of this Arbitration Agreement and Notice of Arbitration Policy. I have read it, or have had an opportunity to read it, and I understand and agree to the same. I also acknowledge receipt of the Summary Plan Description for Company's**

Occupational Injury Benefit Plan, and the Company's HIPAA Privacy Notice.

Date: _____

Employee: _____

Printed Name: _____

Parent or Guardian: _____

Printed Name: _____

Relationship to Employee: _____

Arbitration Agreement – Spanish

ACUERDO ARBITRAJE
Y NOTIFICATION DE NUESTRA POLITICA DE ARBITRAJE

Conroe Pipe, Inc.; Johnson County Pipe, Inc.; U.S. Composite Pipe, Inc.; and, T&T Rock Distribution, LLC. ("La Empresa", "Nosotros" o "Nuestros") mantiene una política obligatoria y mandataria de arbitraje. Esta es una condición de su empleo que Usted y Nosotros estemos de acuerdo en

arbitrar todas las reclamaciones que sean arbitrables y que surgen de o sean relacionadas a su empleo con Nosotros (las "reclamaciones" están enumerados abajo), excluyendo cualquier reclamación de beneficio surgiendo bajo el *Plan de Beneficios Sobre Las Lesiones Ocupacionales,* y cualquier reclamación que no sea arbitrable por razón de leyes o reglas vigentes.

1. Fecha de Vigencia: La fecha de vigencia de este Acuerdo de Arbitraje y Notificación de Nuestra Política de Arbitraje (este "Acuerdo y Notificación") es _____ (la "fecha de Vigencia"). Si usted recibe aviso de este Acuerdo y Notificación antes de empezar a trabajar por La Empresa, el hecho de empezar su trabajo por La Empresa sirve como su aceptación de la condiciones de este Acuerdo y Notificación. En este caso, su primer día de trabajo oficial es la fecha en que usted acepto las condiciones de este Acurdo y Notificación. Si usted ya esta trabajando por La Empresa cuando recibe aviso de este Acuerdo y Notificación y sigue trabajando por Nosotros más de tres días después, se considera que usted ha aceptado las condiciones de este Acuerdo y Noticia empezando con el cuarto día y de allí en adelante. En ese caso, el cuarto día será la Fecha de Vigencia bajo

este Acuerdo y Notificación. **SI USTED CONTINUA TRABAJAR POR NOSOTROS DESPUES DE LA FECHA DE VIGENCIA, USTED Y NOSOTROS MUTUAMENTE ESTAMOS DE ACUERDO EN ARBITRAR TODAS LAS RECLAMACIONES CUBIERTAS BAJO ESTE ACUERDO Y NOTIFICACION ENTRE NOSOTROS, APLICANDO TODAS LAS CONDICIONES DE ESTE ACUERDO Y NOTIFICACION.**

2. Arbitraje es Obligatorio, Vinculante y Mutuo: Todas la reclamaciones relacionadas a su empleo con Nosotros y surgiendo en cualquier parte después de la Fecha de Vigencia, salvo y excepto cualquier beneficio por reclamaciones surgiendo bajo del *Plan de Beneficios Sobre Las Lesiones Ocupacionales,* las reclamaciones de camioneros interestatales, y cualquier reclamación que no sean arbitrables por causa de leyes o reglamentos vigentes, serán resueltos solamente bajo el Arbitraje Obligatorio y Mandatario. **Usted y Nosotros estamos de acuerdo en arbitrar todas reclamaciones y ambos cedemos todo derecho a las**

reclamaciones a un juicio por jurado o a un juicio por un juez en una corte del estado o en una corte federal.

3. ?Quien es Obligado a Arbitrar las Reclamaciones?: La Empresa, todos empleados de La Empresa, los esposos(as), niños, padres, hereditarios, sucesores y cesionarios son gobernados por este Acuerdo y Notificación, y son obligados a arbitrar todas reclamaciones. La Empresa incluye su empleador y todos oficiales, directores, empleados, agentes, franquicias, franquiciadores, sucesores, representantes, predecesores, entidades afiliados o relacionadas o sociedades matriz o empresas subsidiarias o d hermandad a su empleador.

4. Las Reclamaciones: Sujeto a las limitaciones descritas en el Párrafo 2 anterior, las reclamaciones cubiertas bajo nuestro Acuerdo y Notificación incluyen, aunque no son limitadas a lo siguiente: (i) reclamaciones surgiendo de cualquier lesión sufrida por un empleado mientras desempeñando su trabajo por La Empresa, incluyendo pero no limitado a las reclamaciones de negligencia, negligencia

grave, reclamaciones de lesiones personales, empeoramiento físico, desfiguración, dolor y sufrimiento, angustia mental, o muerte por negligencia de otra persona y acciones de sobrevivientes, perdida de servicios de y beneficios de la compañía, afecto y presencia del cónyuge, angustia emocional, y daños ejemplares o punitivos si son permitidos; (ii) todas las reclamaciones relacionados a la aplicación para empleo, el empleo de, o desempleo del trabajador de La Empresa, incluyendo reclamaciones tocante al salario, incumplimiento del contrato, reclamaciones por discriminación u hostigamiento, reclamaciones por violación de cualquier ley federal o estatal, regla o derecho común; y reclamaciones basadas en violaciones de la propiedad intelectual, competición de mala fe, y el uso de o revelación de secretos comerciales o información confidencial. Las reclamaciones cubiertas incluyen gastos médicos y de hospital, medicinas y equipo medico durable y transportación medica, al menos que estos gastos no sean beneficios cubiertos bajo el *Plan de Beneficios Sobre Las Lesiones Ocupacionales* de la Empresa. "Mientras desempeñando su trabajo por la Empresa" significa cualquier actividad que

tiene que ver con el trabajo, negocio, o profesión de La Empresa y que es conducida mientras usted esta haciendo su trabajo para el fomento del negocio o los asuntos de la Empresa, sea o no sea conducida en el lugar de negocio de La Empresa o en otro lugar.

5. Cuales Reclamaciones No Son Reclamaciones: Las siguientes reclamaciones no se consideran reclamaciones: (i) reclamaciones de beneficios bajo nuestro *Plan de Beneficios Sobre Las Lesiones Ocupacionales;* (ii) reclamaciones bajo un convenio colectivo de trabajo; (iii) reclamaciones para beneficios de compensación de desempleo; (iv) reclamaciones bajo la Ley de Compensación para Trabajadores de Texas u otras leyes similares; (v) reclamaciones cubiertas por planes de La Empresa para el beneficio del bienestar o pensión que tienen procedimientos internas para resoluciones fuera del juicio; (vi) reclamaciones hechas por trabajadores de transporte que de hecho mueven bienes en comercio interestatal; y (vii) reclamaciones que no son arbitrables por medio de reglas o leyes vigentes. El Arbitrador tendrá el poder bajo este Acuerdo

y Notificación de resolver cualquier disputa relacionada a la cuestión de declarar si la reclamación es arbitrable o no.

6. Como Sera El Arbitraje Conducido: Usted y Nosotros concordamos en que la Empresa participa en comercio interestatal, aunque muchos de los empleados no participan de hecho en el movimiento de bienes de comercio interestatal, y que la Ley Federal del Arbitraje (el "FAA") gobernara todos los aspectos de este Acurdo y Notificación. Si acaso el FAA u otra ley es enmendada tal que el FAA ya no gobierna este Acuerdo y Notificación, las leyes comunes de arbitraje de Texas serán vigentes. La ley común de arbitraje de Texas se aplicara al máximo grado posible, a cualquier Reclamación incluso aquellos que no están sujetos al FAA. Todos los arbitrajes bajo este Acuerdo y Notificación serán administrados por Benchmark Arbitration Services bajo sus reglas para resolución de disputas. Si Benchmark Arbitration Services no puede o no desea administrar el arbitraje, Judicial Workplace Arbitrations, Inc. administrara el arbitraje bajo sus reglas para la resolución de disputas. Si Judicial Workplace Arbitrations, Inc. no desea o no

puede administrar el arbitraje, entonces American Arbitration Association administrara el arbitraje bajo sus reglas usando el grupo de Dallas, Texas; o ambos participantes pueden elegir y concordar en otro arbitrador. Puede levantarse un acta estenográfica de la audiencia de arbitraje, a petición de cualquiera de las partes y a costa de la parte que lo solicite.

7. Como Sera el Arbitrador Seleccionado: Cualquier arbitraje bajo este Acuerdo y Notificación usara un arbitrador, seleccionado de un grupo que consiste de por lo menos tres especialistas nombradas por la empresa administrando el arbitraje. Si usted y Nosotros no podemos concordar en el arbitrador, usted y nosotros tendremos una cantidad igual de eliminaciones para reducir el grupo hasta que solo un arbitrador queda. Ese será el arbitrador bajo este Acuerdo y Notificación. El arbitrador será neutral a todas partes. Las reglas para descalificar al arbitrador serán igual a las de un juez bajo las leyes de Texas. Si la parte iniciando el arbitraje vive dentro de 50 millas de Dallas, el arbitraje será en Dallas, Texas. Si la parte iniciando el arbitraje vive más de 50 millas de Dallas,

esa parte puede elegir el arbitraje en Dallas, o en un local dentro de 50 millas de su residencia.

8. Honorarios del Arbitraje y Gastos: La Empresa pagara el honorario del arbitrador así como los gastos del acta estenográfica, de solicitar el acta la Empresa.
9. Limitación de Un Año Para Presentar su Reclamación: Todas partes tienen un plazo de un año después de la fecha que ocurrió el incidente que dio resultado a la reclamación para presentar sus reclamaciones ante arbitraje. Falta de presentar la reclamación durante este plazo de tiempo resultara en el rechazo de la reclamación. En caso de que esta fecha no se pueda esforzar por causa de la ley aplicable, ambas partes concuerdan que el arbitrador puede determinar el tiempo apropiado de limitaciones en una pre-audiencia.
10. Las Limitaciones en el Descubrimiento: El descubrimiento y procedimiento antes de la audiencia será gobernado por las Reglas de Texas de Procedimientos Civil. El mismo fin y procedimientos de descubrimiento utilizado bajo estos reglamentos será aplicable excepto que cada parte solo puede deponer: (i) a la parte opuesta; (ii) un testigo

adicional de hecho; y (iii) cualquier testigo experto designado por la parte opuesta. Esta limitación puede ser cambiada por el arbitrador debido a una causa justificada; de otra manera, este párrafo gobernara párrafo 1 de este documento.

11. Remedios y Defensas: Generalmente, todas las partes de la reclamación pueden alegar cualquier causa de acción, obtener cualquier remedio y afirmar cualquier defensa de equidad o legal o disponible en un tribunal del estado de Texas o en un tribunal federal; **sin embargo, el arbitrador no tendrá ninguna autoridad para otorgar indemnización punitiva, solo que sea otorgada a una parte bajo una ley escrita.** Todas partes tendrán el derecho de presentar peticiones, incluyendo mociones dispositivas, permitidas bajo las Reglas de Texas de Procedimientos Civil.
12. Premio Por Escrito y la Confirmación del Premio: Después de que la audiencia del arbitraje se ha terminado, el arbitrador entregara su premio y mandara una copia a todos las partes. El premio no tiene que ser "explicado" ni tiene que llevar razonamiento, nada más puede ser una cantidad de dinero, o puede ser un cero.

Bajo la Sección 9 de la FAA, un juicio de cualquier tribunal de Texas de jurisdicción competente puede archivar la decisión del arbitrador e imponer el premio del arbitraje. Cada parte puede apelar la decisión de la corte tocante al premio del arbitraje. Usted y Nosotros concordamos que los mismos estándares de repaso se aplican a un juicio que surge del premio otorgado por el arbitrador bajo el Acuerdo y Notificación y a un juicio que se cumple en una corte del estado de Texas.

13. Separación del Acuerdo: Si alguna provisión de este Acuerdo y Notificación es determinada ser invalida, ilegal, o incapaz de esforzar, en parte o en total, el balance del Acuerdo y Notificación continuara vigente. Este Acuerdo y Notificación ha sido traducido en español. Si hay un conflicto o un aparente conflicto entre la versión en español y la versión en ingles, la versión en ingles gobernara.
14. No Es Contrato de Empleo: Aunque este Acuerdo y Notificación altera los terminas de su empleo con La Empresa, no es, ni será construido a crear un contrato de empleo continuo, ni expresado o implícito, para ningún empleado de la Empresa.

15. Confidencialidad: Usted and Nosotros entendemos que cualquier arbitraje o acuerdo de una reclamación será estrictamente confidencial, con la excepción de: (i) cualquier comunicación, alegaciones y información escrita relacionada con el archive de o la apelación del premio de arbitraje; (ii) comunicaciones o reportes al Internal Revenue Service, y (iii) cuando usted o Nosotros seamos forzados a testificar bajo citación judicial.

16. Contraprestación: Las promesas mutuas entre nosotros en arbitrar Reclamaciones bajo este Acuerdo y Notificación son la contraprestación para este Acuerdo y Notificación. Su decisión de continuar su empleo con La Empresa después de haber sido avisado sobre el establecimiento de este Acuerdo y Notificación y avisado de las condiciones de este Acuerdo es contraprestación para este Acuerdo y Notificación. Este Acuerdo y Notificación ha sido entregado a usted junto con la enreja del Resumen Descriptivo del *Plan de Beneficios Sobre las Lesiones Ocupacionales, y el Aviso de Privacidad* HIPAA de la Empresa, el recibo de los cuales usted confirma con su firma suscrita. 17.

Terminación y Enmienda: Nosotros tenemos el derecho de terminar o enmendar este Acuerdo y Notificación solamente en adelante, y ninguna terminación y enmienda afectara cualquier reclamación que sucede o es presentada para arbitraje antes de la fecha de vigencia de la terminación o enmienda. Todas reclamaciones anteriores serán arbitradas bajo este Acuerdo y Notificación. Sujeto a lo anteriormente clarificado, este Acuerdo y Notificación sobrevivirá nuestra relación de empleador-empleado con usted y aplicara a cualquier reclamación que surja o es presentado durante o después de su empleo con Nosotros. Este Acuerdo y Notificación no es afectado por la presencia o ausencia del *Plan de Beneficios Sobre las Lesiones Ocupacionales*. Usted tendrá notificación avanzada de a lo menos de diez (10) días del calendario e cualquier enmienda o terminación del Acuerdo y Notificación antes de que sea efectivo para usted.

18. Aplicación Para Otras Personas: Usted y Nosotros estamos de acuerdo que cualquier reclamación presentado por su esposo (a), niños, padres, patrimonio, sucesores y o cesionarios, será arbitrado bajo este

Acuerdo y Notificación, así como toda reclamación ahora o en el futuro presentado por cualquier oficial, director, agente, predecesor, sucesor, entidad afiliadas o relacionadas o sociedades matriz de La Empresa.

Reconozco que he recibido este Acuerdo de Arbitraje y Notificación de Nuestra Política de Arbitraje. Lo he liado, o he tenido oportunidad de leerlo y estoy de acuerdo con el mismo. También reconozco que he recibido el Resumen Descriptivo del *Plan de Beneficios Sobre Las Lesiones Ocupacionales* y de la Noticia tocante las leyes de privacidad de HIPAA.

Fecha: 12-15-15

Firma del Empleado: /s/ R. Ignacio V.

Nombre en letra de molde: Rutilio Ignacio Velasco

Padre o Tutor: _____

Nombre en letra de molde: _____

Parentesco con el Empleado: _____

Payroll Stuffer – English

NOTICE OF ARBITRATION POLICY: Conroe Pipe, Inc.; Johnson County Pipe, Inc.; U.S. Composite Pipe, Inc.; and, T&T Rock Distribution, LLC. and their related entities (together and individually the "Company") have implemented a mandatory binding claims Arbitration Policy, effective 12/10/15. The Arbitration Policy is set forth in detail in the "Arbitration Agreement and Notice of Arbitration Policy" which Company has distributed to all Employees. Under the Arbitration Policy, you and Company mutually agree to arbitrate claims or disputes arising between you and Company, including all claims arising from occupational injury, or concerning your job or Company's working conditions (except benefit claims arising under Company's Occupational Injury Benefit Plan and certain non-arbitrable claims). ***The Arbitration Policy is a condition of your employment with Company. If you continue employment with Company you will be bound by it. You must bring your arbitration claim within one (1) year after the date of the event or injury which is the basis***

of your claim. Company must do the same. The Arbitrator will not have authority to award punitive damages to any party, unless they are granted by statute. If you have not received a copy of the Arbitration Agreement and Notice of Arbitration Policy, please tell your Supervisor and he or he or she will provide it to you.

Payroll Stuffer – Spanish

AVISO SOBRE POLITICA DE ARBITRAJE

Conroe Pipe, Inc.; Johnson County Pipe, Inc.; U.S. Composite Pipe, Inc.; and, T&T Rock Distribution, LLC. y sus entidades relacionadas (juntos y individualmente, la "La Empresa") han implementado una Política de Arbitraje obligatoria y vinulcante para reclamaciones, vigente 12/10/15. La Política de Arbitraje es manifestada en detalle en el "Acurdo de Arbitraje y Noticia de Política de Arbitraje," el cual La Empresa ha distribuido a todos los empleados. Bajo la Política de Arbitraje, usted y La Empresa mutuamente acuerdan arbitrar todas reclamaciones o disputas surgiendo entre usted y La Empresa, incluyendo todas

reclamaciones resultando de lesiones ocupacionales, o pertenecientes a su trabajo o de condiciones del trabajo de La Empresa (excepto reclamaciones surgiendo de beneficios bajo el *Plan de Beneficios Para Las Lesiones Ocupacionales* de La Empresa y ciertas reclamaciones que no son arbitrables). La Política de Arbitraje es una condición de su empleo con La Empresa. Si usted continua trabajar por La Empresa, usted será obligado a esta Política de Arbitraje. Usted tiene que presentar su reclamación antes de UN (1) AÑO después de la fecha que ocurrió el hecho o la lesión cual es la base de su reclamación. El Arbitrador no tendrá autorización para otorgar indemnización punitiva a ninguna parte, solo que sea otorgada por ley escrita. SI USTED NO HA RECIBIDO UNA COPIA DEL "ACURDO DE ARBITRAJE Y NOTICIA DE POLITICA DE ARBITRAJE," FAVOR DE AVISARLE A SU SUPERVISOR PARA QUE EL O ELLA LE PROPORCIONE UNA COPIA.

Respectfully submitted,

/s/ Gerard T. Fazio
Gerard T. Fazio
Counsel of Record
Jason E. Kipness
Attorney

January 16, 2019.